

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of the Pay Telephone)	
Reclassification and Compensation)	CC Docket No. 96-128
Provisions of the Telecommunications)	
Act of 1996)	NSD File No. L-99-34
)	
RBOC/GTE/SNET Payphone Coalition)	
Petition for Clarification)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

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COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. (“Qwest”),¹ respectfully submits these comments in response to the Federal Communications Commission’s (“Commission”) *Further Notice of Proposed Rulemaking* (“Notice”) in the above-referenced proceeding.²

INTRODUCTION AND SUMMARY

The Commission seeks comments regarding its payphone compensation rules and how to ensure that payphone service providers (“PSPs”) are “*fairly compensated*” for every completed call, as required by Section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 276. The Commission’s numerous orders addressing payphone compensation are summarized in its *Notice*. Essentially, the Commission’s orders have attempted to establish a framework in which PSPs are fairly compensated for coinless or otherwise uncompensated payphone-originated calls by the facilities-based carriers

¹ As of June 23, 2003, Qwest has relocated its Washington, DC office. Service may be made on Qwest at its new location, Suite 950, 607 14th Street, N.W., Washington, DC 20005.

² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; RBOC/GTE/SNET Payphone Coalition Petition for Clarification*, CC Docket No. 96-128, Further Notice of Proposed Rulemaking, FCC 03-119, rel. May 28, 2003. *And see* Public Notice, DA 03-1886, rel. June 3, 2003.

that deliver such calls whom the Commission deems to be the “primary economic beneficiaries” of the calls.³

The Act mandates compensation for “each and every completed call.” 47 U.S.C. § 276. The main issue with which Qwest and most members of the industry have struggled is the Commission’s interpretation of a completed call as a call that is answered by the called party.⁴ Qwest, one of the largest PSPs in the country, cannot determine whether a call has been answered -- and is therefore compensable -- with regard to any call from a payphone. On the other hand, Qwest, one of the largest interexchange carriers (“IXCs”), is unable to determine whether a call is answered by the “called party” as the Commission has defined the term, if the call is made through a platform, typically when a prepaid card or calling card is used.

Qwest’s comments here will discuss some of the difficulties Qwest has experienced -- and continues to struggle with today -- as a PSP attempting to collect compensation and as an IXC trying to implement a payment scheme that captures all completed calls that it hands off to other carriers. Qwest recommends several proposals to increase the call completion information available to PSPs, and to help both PSPs and IXCs administer their compensation systems more effectively by inducing greater cooperation from reseller carriers through a certification requirement. As one of the largest PSPs and IXCs in the country, as well as a facilities-based reseller, a local exchange carrier (“LEC”) and a provider of prepaid calling card services, Qwest’s proposals reflect a balanced compromise among the sectors of the industry that are

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd. 20541, 20584 ¶ 83 (1996) (“*First Payphone Order*”), *on recon.*, 11 FCC Rcd. 21233 (1996) (“*Payphone Order on Reconsideration*”), *granted in part and denied in part*, *Illinois Public Telecommunications Assn. v. FCC*, 117 F.3d 555 (D.C. Cir.), *clarified on reh’g*, 123 F.3d 693 (D.C. Cir. 1997), *cert. denied*, 523 U.S. 1046 (1998).

⁴ *First Payphone Order*, 11 FCC Rcd. at 20573-74 ¶ 63.

impacted by the payphone compensation rules. Qwest respectfully submits that its proposals here represent the most workable industry-wide solutions to help bridge the visibility and accountability gaps of a payment scheme dependent on calls being answered by the called party.

DISCUSSION

I. QWEST HAS EXPERIENCED DIFFICULTIES IN THE PER CALL COMPENSATION PROCESS BOTH AS A PSP AND AS A CARRIER.

A. Difficulties Collecting Dial-around Compensation by Qwest the PSP.

As a major PSP, Qwest cannot count the exact number of toll-free calls that are completed to the called party from Qwest's payphones. Qwest does not see whether a call is answered by the called party because, as the Commission explained in the *Notice*, the PSP's payphone "is on the 'line' side of the LEC switch and cannot receive call routing information generated on the trunk side by the LEC."⁵ As a result, Qwest must rely on estimates and other indirect methods by which to assess the validity of a carrier's call counts. This problem has persisted both before and after the Commission's *Second Order on Reconsideration*, which placed compensation responsibility on the first carrier to handle the call ("first switch" rule).⁶

Qwest's systems identify the carrier identification code ("CIC") associated with a call, along with the duration of the call. Because the Commission has declined to endorse the use of a durational surrogate to determine the number of completed calls,⁷ Qwest's estimates cannot replace actual call completion records. Qwest is therefore left with the choice of accepting the

⁵ *Notice* ¶ 23.

⁶ *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; RBOC/GTE/SNET Payphone Coalition Petition for Clarification*, Second Order on Reconsideration, 16 FCC Rcd. 8098, 8103 ¶ 11, 8105 ¶ 15, 8106-07 ¶¶ 18-19 (2001) ("*Second Order on Reconsideration*"), *rev'd and remanded*, *Sprint Corp., et al. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003), *vacated*, *Sprint v. FCC*, No. 01-1266, slip op. (Apr. 1, 2003).

⁷ *First Payphone Order*, 11 FCC Rcd. at 20573-74 ¶ 63.

carrier's call count information on faith, or challenging the carrier's call count with its own incomplete information.

During the period before the *Second Order on Reconsideration*'s first switch rule took effect on November 23, 2001, the facilities-based carrier who completed the call, including the switch-based reseller, was responsible to pay compensation ("last switch" rule).⁸ There is no doubt that under the last switch rule, Qwest's task of recovering compensation varied from difficult to impossible. Not only was Qwest unable to precisely know the number of calls for which it should receive compensation, it often did not know which carrier to look to for payment.

Even though Qwest's systems identify the CIC associated with a call, the carrier identified by that CIC very often hands off the call to a switch-based reseller who either hands off the call to another reseller or completes it to the called party. Before November 23, 2001, the facilities-based carrier who completed the call was responsible to pay compensation, but that carrier may have been one, two or more carriers removed from the carrier whose CIC was identified in Qwest's systems. Even when Qwest tracked down the last carrier who handled the call, it was not uncommon for that carrier to inform Qwest that it had a contractual agreement with the previous carrier in line, or the first IXC, requiring the other carrier to pay the PSP. When it seemed that the situation could not become any less clear, Qwest would encounter resistance from both carriers to the agreement who were reluctant to turn over the contract language that governed the parties' respective payment obligations. At the end of the day, both carriers would take the position that the other was responsible to pay, and Qwest had little or no information with which to believe one over the other.⁹

⁸ *Payphone Order on Reconsideration*, 11 FCC Rcd. at 21277 ¶ 92.

⁹ See, e.g., *Qwest Corporation v. Cable & Wireless USA, Inc. and U.S. South Communications, Inc.*, Formal Complaint, File No. EB-03-MD-004, filed Feb. 28, 2003.

The Commission's 1998 *Coding Digit Waiver Order* sought to clarify the carriers' reporting obligations by reiterating that IXCs were required to identify to PSPs those switch-based resellers who assumed responsibility to pay compensation for calls made using particular dial-around numbers, along with the dial-around numbers that belonged to them.¹⁰ It was Qwest's experience, however, that IXCs did not often provide this information. Even when some IXCs did disclose their reseller information, it was not until many months after Qwest made repeated requests for the information.¹¹ Once Qwest learned that particular dial-around numbers were the responsibility of a certain reseller, Qwest found that the information often raised more questions than it helped answer. Because it is not uncommon for 8XX numbers to move from carrier to carrier, Qwest also needed the timeframe during which the dial-around number belonged to the reseller, the geographic region for which the reseller was responsible to pay on that dial-around number, and any compensation arrangement the reseller may have had with the IXC. All the while, Qwest could only estimate the number of calls that were completed using that dial-around number.

The *Second Order on Reconsideration* alleviated some of these problems for Qwest as a PSP, insofar as Qwest could now look solely to the first carrier in line for payment. Because Qwest still cannot see whether a call is completed to the called party, Qwest as a PSP and the actual "fairness" of the compensation system continue to depend on a kind of carrier honor

¹⁰ *Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, AT&T Request for Limited Waiver of the Per-call Compensation Obligation*, Memorandum Opinion and Order, 13 FCC Rcd. 10893, 10915-16 ¶ 38 (1998) ("*Coding Digit Waiver Order*").

¹¹ The Commission has never ordered an IXC to pay dial-around compensation in lieu of providing reseller identification information, and in fact it has expressly rejected such a rule in *Bell Atlantic- Delaware, Inc., et al. v. MCI Telecommunications Corp.*, 17 FCC Rcd. 15918 (2002). Therefore, IXCs have never had a financial incentive to provide the reseller information in a timely fashion or at all.

system under the framework of the *Second Order on Reconsideration*. Carriers and their resellers, without having any economic incentive for doing so, must accurately report and pay compensation based on the number of calls that are actually answered by the called party.

B. Difficulties of Qwest the IXC Operating Under the *Second Order on Reconsideration*.

The ability of Qwest the IXC to track calls to the called party depends on the type of dial-around call that is placed. If Qwest routes a subscriber 800 call to another carrier who does not have a point of presence where the call originated or to a Qwest facilities-based reseller customer, signaling system 7 (“SS7”) allows an answer message to be sent back to Qwest in both instances indicating that the call was answered by the called party. This is possible even if one of the carriers along the transmission path, typically the smaller reseller carrier, does not employ SS7. The terminating LEC converts the answer message information back to SS7 so that the answer message can be sent back to the first IXC.

The difficulty lies with calls to platforms, *i.e.*, calls made using a prepaid card or a calling card. In this situation, there are actually *two* calls that occur, and Qwest has visibility only into *one* of the calls. For the “first leg” of a platform call, also called the “inbound” call (from a platform’s perspective), Qwest routes a toll-free number call to a reseller’s platform or to a platform service provider, where the call terminates. The reseller or platform service provider then places the “second leg” call, also called the “outbound” call, by generating a second line that originates at the platform and terminates at the called party’s number. This two-call process breaks the SS7 link between the carriers. Qwest receives an answer message indicating that the first-leg call reached the platform, but does not receive an answer message regarding the second-

leg call. The Commission, however, has expressly identified termination of **both** calls as a requirement for compensation to the PSP.¹²

The Commission's *Second Order on Reconsideration* placed much of the administrative burden and expense of tracking and paying for "every call answered by the called party" to IXC's, including Qwest. In order to implement the *Second Order on Reconsideration*, Qwest has expended significant resources in time, effort and cost to obtain call record details from its reseller customers so that Qwest may have access to termination data about the second-leg calls that are made from platforms. Qwest incorporated a "true-up process" into its contracts with its facilities-based reseller customers. It is a process that depends on these reseller customers' cooperation and participation, and consequently has had little success.

Under its true-up process, Qwest submits a monthly invoice to its reseller customers with a payphone surcharge for each coinless payphone call delivered to the reseller's network. Qwest transmits its own call records of these calls to a clearinghouse, knowing that a large portion of these calls are actually just the "first-leg" calls of platform calls. Each reseller should then submit to Qwest's clearinghouse a file of all completed calls, including those calls that comprise the "second leg" of the platform calls. The clearinghouse then matches Qwest's records against the reseller's files of completed calls. All completed calls, including all completed platform calls, flow through to the clearinghouse's quarterly claims validation process for payment to the PSP. Where Qwest surcharged a call to the reseller for which the reseller has no record of termination, the assumption is made that the call was a platform call for which the second leg did

¹² *In the Matter of Flying J, Inc. and TON Services, Inc., Petition for Expedited Declaratory Ruling Regarding a Primary Jurisdiction Referral from the U.S. District Court for the District of Utah, Northern Division*, Memorandum Opinion and Order, CCB/CPD No. 00-04, FCC 03-108 at ¶¶ 7-10 (rel. May 9, 2003).

not terminate, *i.e.*, the call was not answered by the called party and is therefore not compensable. Qwest's surcharge for that call is then credited back to the reseller.

Unfortunately, Qwest's true-up process with its reseller customers has not worked well, to say the least. Qwest currently has 355 customers purchasing switch-based reseller 8XX products, but only 27 of whom actively participate in the true-up process. With respect to these relatively few customers who do participate in the process, Qwest must rely on the disclosure they make regarding the number of completed calls for which the surcharge is properly assessed. Although Qwest's contracts require each reseller to provide accurate, complete and timely call completion records, Qwest cannot independently verify the call counts these customers submit because it does not know: (i) which 8XX calls were inbound calls into platforms, or (ii) how many of those calls also resulted in a second-leg call that was answered by the called party. Qwest is wary that some resellers are submitting something less than the entire universe of call records of completed calls.¹³ Without having the means to independently verify the full transmission of platform calls, the effectiveness of Qwest's true-up process depends on the number of completed calls that is volunteered by its reseller customers.

In addition, many of Qwest's reseller customers simply do not submit call completion records, but refuse to pay the surcharge on their invoices. In certain instances, Qwest has paid the PSPs for every call delivered to the resellers' platforms. Many months later after the PSPs are paid, the same reseller customers have insisted on retroactively participating in the true-up process. This has resulted in double-payments by Qwest; once to the PSP who was paid for all calls completed and not completed to the called party, and a second payment crediting the reseller for incomplete calls.

¹³ For example, one reseller customer has claimed that only three percent of the calls that Qwest routes to it result in terminated second-leg calls.

From November 2001 through January 2003, Qwest experienced many millions of dollars in customer disputes specific to payphone surcharges. Over half of the amounts in dispute consist of disputed surcharges credited back to customers even though Qwest has already paid the PSPs. In other words, between November 2001 and January 2003, Qwest paid PSPs many millions of dollars in out-of-pocket payphone compensation payments on behalf of resellers whom the PSPs would otherwise have had to chase down themselves. Qwest believes that if the Commission re-adopts the first switch rule of the *Second Order on Reconsideration*, the Commission must issue a directive that guarantees cooperation by resellers.

II. QWEST'S PROPOSALS FOR IMPROVING THE PER CALL
COMPENSATION SYSTEM REPRESENT THE COMMON
GROUND OF DIVERGING INTERESTS IN THE DIAL-AROUND MARKET.

A. Qwest is Ideally Situated to Propose a Solution to the Commission.

Qwest has struggled with the Commission's payphone compensation rules from every aspect of the industry. Qwest is one of the largest PSPs in the country and derives substantial revenues from dial-around compensation. Qwest is also one of the largest IXC's in the country. No other carrier in the country has such a significant presence on both sides of the issue. In addition, Qwest is a major LEC, a switch-based reseller and a provider of prepaid calling card services. Consequently, as the payphone compensation rules have changed, so has the impact of the rules on the various segments of Qwest's operations. Qwest can describe some of the hardships experienced both by PSPs and IXC's. More importantly, Qwest's proposals for the Commission's consideration here are the result of Qwest's efforts to reconcile the conflicting interests of its PSP and IXC, and to weigh the concerns of its other business units affected by the payphone compensation rules. Qwest's proposals have the blessing of all of the business units

involved, and therefore represent a compromise that can and should be extended to the entire industry.

Qwest respectfully submits that its comments here are likely to be the most objective and balanced across the industry on this issue because virtually every other participant in this proceeding is likely to have only one segment of the industry primarily influencing its comments (*e.g.*, as PSP, IXC, reseller or LEC).

B. Qwest's Proposal is Intended to Improve Reliability of Call Completion Records of Carriers and Particularly Switch-based Resellers.

The payphone compensation rules are hampered by two main problems. First of all, the Commission has determined that a call must be answered by the called party in order to be compensable. Yet current telecommunications technology does not allow call tracking to the called party for calls routed to a carrier's platform or to a platform service provider, which calls comprise a significant percentage of all compensable dial-around calls.¹⁴ As a result, the carrier who operates the platform or who delivers the call to a platform service provider is the only carrier in line who actually knows (or has contractual privity with the platform service provider who knows) whether the second-leg call is terminated and is therefore compensable.¹⁵ Of course for the PSP, this visibility problem extends to *all* calls answered by the called party.

¹⁴ For instance, calls routed to switch-based resellers comprise between 50 and 75 percent of Qwest's dial-around traffic.

¹⁵ An alternative would be to define a "completed call" as termination of the "inbound" call into a platform -- essentially, defining the platform as the "called party." This revision of the definition would still be consistent with Congress's mandate in Section 276. Qwest believes, however, that such a revision would seriously harm the prepaid calling card industry, which is highly competitive, operates on small margins, and contains a significant number of small businesses. If prepaid card providers were required to pay surcharges for every call into their platform, even without termination of an outbound call, the providers would experience substantially negative cash flow problems. Furthermore, Qwest believes that most platforms are not built with the memory to keep records of all calls into the platform; the number of inbound calls typically is

The second problem is that the carrier who sees the call through to the called party has no financial incentive to accurately report the number of calls that were actually answered by the called party. For instance, a facilities-based reseller might complete 500 second-leg calls to the called party, report 200 completed calls to the IXC, pay a surcharge to the IXC on 200 calls, and collect a surcharge from its customers on the 500 calls that it actually delivered to the called party. Neither the PSP nor the IXC know whether 200 or 500 or some other number of calls is truly compensable.

Accordingly, Qwest proposes certification, with appropriate mechanisms for timeliness and accuracy, as the primary mechanism underlying payphone compensation rules.

1. Proposal Assuming First-Switch Carrier is Responsible to Pay PSP.

With these problems in mind, Qwest proposes that the Commission require an annual certification from a corporate officer of each carrier who will attest to: (1) the number of calls for which that carrier paid compensation to the PSP (or paid a surcharge to the IXC, identifying the number of calls for each IXC) broken down by quarter; and (2) the number of calls on which the carrier charged its customers a surcharge (and for IXCs, identifying the number of calls for each reseller customer), broken down by quarter. Untimely certifications should be subject to a fine, and the submission of false data should be processed through an enforcement and penalty scheme. While this proposal does not cure the lack of visibility to the called party, it eliminates the financial incentive a reseller may have to misreport call completion numbers to the IXC or PSP.

Furthermore, the Commission should require the first-switch carriers, the IXC payors, to submit a statement with their quarterly compensation payments that identifies by CIC the carriers

about three times the number of outbound calls. Therefore, changing the definition of a “completed call” is legally permissible but economically impractical.

on whose behalf they are paying, along with the corresponding payment for that carrier. Because Qwest as a PSP tracks payphone calls by CICs, it routinely receives payments from carriers without knowing whether and what amount to attribute to that carrier's reseller. This additional information will allow Qwest to more accurately apply carrier and reseller payments on the estimated amounts due.

Qwest believes that the payphone compensation rules have been difficult to administer by both the PSP and IXC side of the business. To be sure, the first switch rule has been very costly and administratively burdensome to Qwest as IXC, who cannot track completed calls that are routed to platforms. On the other hand, Qwest -- the PSP -- has *no* visibility to the call path once it is handed off to the IXC. If the Commission decides to adhere to the first switch rule, Qwest believes that the Commission should also mandate the proposed disclosure obligations to help IXCs and PSPs better track platform calls and calls completed by carriers down the line.

2. Proposal Under Last Switch Rule Prior to *Second Order on Reconsideration*.

Alternatively, the Commission could revert to its original rule that the last switch long-distance carrier is responsible to pay compensation to the PSP. This would alleviate the administrative burden that was placed on IXCs under the *Second Order on Reconsideration*. If the Commission were to revert to this rule, Qwest proposes that the Commission require the annual certification described in Section II.B.1, and impose additional disclosure obligations on carriers to provide PSPs sufficient information in real time to contact paying carriers and resolve disputes.

First, the Commission should order that IXCs and resellers must provide PSPs full call detail records for every compensated call with their quarterly compensation payments, and not merely the total number of calls per automatic number identification ("ANI") and per 8XX

number currently required. Qwest believes that such a requirement would not be onerous on carriers because carriers necessarily *must* have the call records available in order to count the number of compensable calls. This reporting obligation will require IXC's to obtain call record data from the platform service providers who are their customers, and it will require resellers to obtain call record data from the platform service providers who are the resellers' customers. The purpose of this requirement is to give PSPs a way of determining which calls from their payphones have been compensated by the carriers. To the extent that the PSP believes additional calls were made but not compensated, the PSP can focus exclusively on that subset of its calling records and engage carriers in discussions about these calls.

Second, the Commission should require that all carriers must publish and maintain a list of the 8XX numbers they service for which another party is responsible to pay compensation, along with that other party's name and contact information. The list should be in a standardized format in a publicly accessible location, probably each carrier's website. This list allows a PSP, who has only the CIC for any given 8XX call, to access the particular carrier's website and determine if that carrier is identifying another party, a reseller, as responsible for paying compensation. Qwest recommends that whenever a reseller is identified on a carrier's list, that reseller may not contest with a PSP its obligation to pay compensation. Instead, if a reseller believes a carrier has misidentified it on the carrier's website, the issue should be resolved between the carrier and the reseller, and the reseller can obtain common-law indemnification or breach of contract damages from the carrier if the carrier made a mistake on its website. The PSP should not be required to wait for payment until the carrier and its reseller debate which of the two is responsible for compensation.

Third, all carriers must submit to the Commission the annual certification, as Qwest discussed above.

Should the Commission return to the last switch rule that preceded the *Second Order on Reconsideration*, it will certainly relieve carriers from administering the first switch rule that has proven largely unworkable for IXC's over the last two years. Under the last switch rule, however, Qwest urges the Commission to require the proposed reporting and disclosure obligations to allow PSPs easier access to the information they need to identify the carriers responsible for paying compensation, and to engage in meaningful negotiations with carriers about the specific calls for which the PSP did not receive compensation.

CONCLUSION

Qwest's proposals here are not prejudiced by a predisposition on one side or the other, but are a compromise between both its PSP and IXC, as well as the other business units within Qwest that are impacted by the payphone compensation rules. For the reasons discussed, the Commission should adopt the reporting and disclosure obligations Qwest has proposed as part of either the first switch or the last switch rule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be filed with the FCC via its Electronic Comment Filing System and served via e-mail on Qualex International, Inc. and Ms. Janice M. Myles of the FCC's Wireline Competition Bureau, Competition Policy Division.

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June 23, 2003

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